IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

Crl.MC.No. 3115 of 2007()

CRMP.5836/2007 of JUDL.MAGISTRATE OF FIRST CLASS, PALA

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PETITIONER: ACCUSED

RAJESH.P.BALAKRISHNAN, AGED 30 YEARS
S/O. LATE BALAKISHNAN, SRAMBICKAL HOUSE,
MEVIDA P.O. MEENACHIL VILLAGE, KOTTAYAM DISTRICT.

BY ADV. SRI.C.S.MANU
SRI.S.K.PREMRAJ

RESPONDENTS: COMPPLAINANT

STATE OF KERALA, REPRESENTED BY THE
SUB INSPECTOR OF POLICE, PALA POLICE STATION
PALA, KOTTAYAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3115 of 2007

Dated this the 1st day of November 2007

O R D E R

The petitioner is the accused in a crime registered under the provisions of the Kerala Abkari Act. His vehicle was seized by the police on the allegation that it was used for illicit transportation of I.M.F.L. The vehicle has been seized. Seizure was reported to the learned Magistrate. The vehicle is now being proceeded against under Section 67B of the Kerala Abkari Act. The petitioner filed an application before the learned Magistrate for release of the vehicle under Section 451/457 Cr.P.C. Inasmuch as the vehicle is involved in proceedings under Section 67B of the Kerala Abkari Act, the learned Magistrate rejected the prayer for interim release of the vehicle under Section 451/457 Cr.P.C.

2. The learned counsel for the petitioner submits that the mere initiation of proceedings under Section 67B of the Kerala Abkari Act is no reason for the learned Magistrate not to exercise his jurisdiction under Section 451/457 Cr.P.C to direct

interim release of the vehicle. In these circumstances, it is prayed that the vehicle may be directed to be released to the petitioner after setting aside the order concerned.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the proceedings before the authority under Section 67B of the Kerala Abkari Act has made much progress. Notice was issued to the petitioner and the petitioner was served with such notice on 18/10/2007. The petitioner can now appear before the authorised officer and raise his objections. If he wants interim release of the vehicle, he can make a claim before the authorised officer and appropriate orders shall be passed. At any rate, inasmuch as the proceedings under Section 67B of the Kerala Abkari Act have already commenced and have made much progress, there is no reason now to direct that the vehicle be released under Section 451/457 Cr.P.C, submits the learned Public Prosecutor.

5. I am in agreement with the learned counsel for the petitioner that the mere fact that action can be taken under Section 67B of the Kerala Abkari Act will not ipso facto divest the

criminal court of its jurisdiction under Section 457, 451 or 452 Cr.P.C. But in a case like the instant one where proceedings have already commenced under Section 67B of the Kerala Abkari Act and the petitioner has been served with the show cause notice, it is not necessary for this court to interfere with the decision of the learned Magistrate. The petitioner must seek interim custody of the vehicle under Section 67B of the Kerala Abkari Act from the official concerned.

6. This Criminal Miscellaneous Case is in these circumstances dismissed with the above observation.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007